

1998

State of Utah v. Kevin Andrew Unck : Brief of Appellant

Utah Court of Appeals

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Gary R. Heward; Counsel for Appellee.

Stephan Laker; Weber County Public Defenders Association; Counsel for Appellant.

Recommended Citation

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SECOND DISTRICT COURT-OGDEN COURT
WEBER COUNTY, STATE OF UTAH

STATE OF UTAH

Plaintiff

Appellee

VS.

KEVIN ANDREW UNCK

Defendant

Appellant

IN THE COURT OF APPEALS

APPELLATE NO: 981521CA

BRIEF OF THE APPELLANT

UTAH COURT OF APPEALS
BRIEF

UTAH
DOCUMENT
KFU

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DOCKET NO. 981521

1. Nature of Proceeding
Appeal

2. Appeal from the Second District Court -
Ogden Court, Weber County. Before the
Honorable Judge: Stanton M. Taylor

3. Parties

Gary R. Heward, For the State Appellee
1380 Washington Blvd 2nd Fl.
Ogden, Utah 84401

Stephan Laker Defendant's Counsel
Weber County Public Defender's Office
2568 Washington Blvd
Ogden, Utah 84401

FILED

Utah Court of Appeals

DEC 01 1998

Julia D'Alesandro
Clerk of the Court

Kevin Andrew Unck Defendant
Box 250
Draper, Utah 84020

Argument priority
(3) Appeals from habeas corpus petitions and
other post-conviction proceedings

Gary R Heward
for the State

Kevin Andrew Unck
Attorney Pro Se

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Table of Authorities
Utah Code Annotated 76-6-501

Statement of Jurisdiction

This is an appeal by the defendant on a post-conviction; "Motion to Dismiss". Hearing held on August 17, 1998, In Second District Court - Ogden Court, before the Honorable Judge: Stanton M. Taylor. Defendant's Motion to Dismiss, "Denied"

Statement of Issues

(a) An agreement in Judge Glasmann's Court was agreed to by the State and the defendant, "not to file any further forgery charges that pre-dated July 9, 1997. This agreement was made in open court and on the record.

(b) Did the State breach their promise, "not to file any further forgery charges that pre-dates July 9, 1997.

(A) Citation to the record; Page 3, hearing transcripts of November 24, 1997. Also, so that the Court is clear, because Mr. Unck a few months ago

pled guilty in Judge Glasmann's Court with what he understood to and he pled to multiple counts arising at the same time, to this same kind of concurrent, he understood that this negotiation in terms of not filing anything else was done then. I got a tape of the plea session, not the sentencing, and in the plea session it does not indicate that the State wasn't gonna file other charges. He tells me that in the sentencing session, it did, and we are reserving in our thirty-day period that we'd have to withdraw a plea, Just so you'll know, if in fact that sentencing tape indicates that that was the representation made that there wouldn't be any more filed, then we may revisit this, just so you'll know.

Constitutional Provisions

Utah Code Annotated 76-6-501

Forgery - "writing" - defined.

11 A person is guilty of forgery if, with purpose to defraud anyone, or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he:
(a) alters any writing of another without his authority or utters, any such altered writing; or

(b) makes, completes, executes, authenticates, issues transfers, publishes, or utters any writing so that the writing or making, completion, execution, authentication, issuance, transference, publication or utterance purports to be the act of another, whether the person is existent or non-existent, or purports to have been executed at a time or place or in a numbered sequence other than was in the fact, the case, or to be a copy of an original when no such original existed

(2) As used in this section, writing includes printing, electronic storage or transmission or any other method of recording valuable information including forms such as:

(a) checks, tokens, stamps, seals, credit cards, badges, trademarks, money, and any other symbols of value, right, privilege, or identification;

(b) a security, revenue stamp, or any other instrument or writing issued by government or any agency; or

(c) a check, an issue of stocks, bonds, or any other instrument or writing representing an interest in or claim against property, or a pecuniary interest in or claim against any person or enterprise.

(3) Forgery is a Felony of the Third degree.

Statement of Case

A theft and forgery, the theft resulting from the forgery.

In a disposition hearing held, July 9, 1997 in Second District Court - Ogden Court before Honorable Judge: Michael J. Glasmann. The defendant plead guilty to multiple charges arising out of a single criminal episode.

- (1.) Forgery 3rd degree felony, That on the 2nd day of February, 1997, the defendant committed the act of security agreement at Sound Warehouse by; filling out a credit application and obtaining merchandise from said application.
- (2) Forgery 3rd degree felony; that on the 1st day of February 1997, the defendant committed the act of Security agreement at R.C. Willey, by; filling out a credit application.
- (3) Forgery 3rd degree felony; that on the 2nd day of February 1997, the defendant passed a check a check at Shop Ko, belonging to a Michael Beaudoin.
- (4) Possession of Controlled Substance 3rd degree felony. That on the 10th day of June 1997, the defendant passed a check at the Comfort Suite Motel, belonging to a Brad Johnson. The controlled substance was found in the room.

The State dismissed six subsequent charges.

Before the defendant entered his plea's of guilty to the Charges above, The Court asked the defendant if he had any questions. The defendant replied "No", but then stated that there maybe more checks out there. Because there was a box of checks missing.

The Court Stated; does the State agree not to file any further "Forgery" charges that pre-date 7/9/97?

The State replied; "I'm not sure, Your Honor. We never talked about that particular thing. We'd at least request restitution on those outstanding checks as well.

The defendant agreed;

The Court then asks the State; Even that which has not been charged, but could be charged by the County Attorney's Office.

The defendant agreed to pay all restitution on whatever came into the County Attorney's Office.

Then the Court again asks the State; With that promise then on the record, do you agree not to file other "forgery" charges that

pre-date this?
The State, "Agreed."

On September 19, 1997 the defendant made an initial appearance, the following informations are read

(1) Theft 3rd degree felony, this theft arose from a forgery,

(2) Forgery 3rd degree felony; that on the 1st day of June, 1997, the defendant committed the act of filling out a credit application at R.C Willey and obtaining merchandise from said application

The defendant represented by Mr. Bernard Allen of the Weber County Public Defender's Office. The defendant told his counsel that there was an agreement made in Judge Glasmann's Court. That these charges should not be brought up against me. Only the amount of restitution to be affixed to the amount owed in Judge Glasmann's Court.

Pre Trial Conference scheduled 11/24/97.

The defendant, this time represented by Mr. John Caine. The defendant felt that counsel, Bernard Allen would have researched defendant's claim of said agreement; which was made in Judge Glasmann's court. The defendant informed counsel

that there was in fact an agreement made. And that the defendant had a 12/4/97 Board of Pardons hearing. The defendant did not want these charges to disrupt this Board of Pardons hearing. Defendant requested transcripts. Counsel then told the defendant a copy of transcripts would be sent to him. The defendant did not receive transcripts.

Then on the record, defendant's counsel told the Court, that after viewing the tape, and in fact if an agreement was made in Judge Glasmann's, that we could revisit this within the thirty day time limit.

The defendant then plead guilty to both charges.

After twenty seven days passed, and not receiving no response or transcripts from counsel, The defendant then prepared a motion and filed a motion to withdraw guilty plea's. A hearing was set for 3/2/1998 on defendant's motion to withdraw guilty plea's.

At this time the defendant represented by a Mr. Marvin Gravis. Defendant asked counsel if he had a copy of transcripts. Counsel replied no, and that he had just viewed the tape and there was no such agreement made. The defendant argued, that there had to be an agreement. Counsel

then informed the defendant, that the State told counsel that if the defendant did not withdraw his motion, that the State would file more charges.

Therefore the defendant having no transcripts to verify his argument of having an agreement. Withdrew his motion until said time the defendant could on his own procure transcripts from the court reporter.

The defendant upon saving up enough money from his prison employment, then sent a request and money order to the court reporter, who then upon recievement of the money, copied and prepared the transcripts. Sent them to the defendant. The defendant recieved transcripts May 29th 1998.

The defendant filed a motion to dismiss under Rule 22(e) U.R.C.P. A hearing was held on August 17, 1998. After oral argument trial court denied, defendant's motion, because of the language and a possible jurisdiction issue.

Thus this appeal was taken.

Summary of Arguments
The question presented on this appeal is

whether the agreement covered only check forgeries as a matter of language spoken by the defendant.

Argument

The defendant argues that the agreement did in fact cover these charges.

The Court stating to the State, do you then with that promise then on the record, do you agree not to file any further forgeries that pre-date 7/9/97?

The State agreed.

The defendant argues that if it were in fact the States position or intentions that this agreement only covered, "check forgeries" that before agreeing to said agreement of merely forgeries, the State should have stipulated that it only covered check forgeries, instead of any further forgeries as the record reflects.

The prosecution erred by not making it known then in clear and precise language, as the record reflects in clear and precise language as forgeries. See forgery Utah Code Annotated 76-6-501 Forgery defined.

The State argues that the defendant only spoke of check forgeries, and that we did not mention any other types of forgeries. On pages 5, 6, 7, 8 of hearing transcripts of 7/9/97 before Judge Glasman, there were security agreements, and checks spoken of.

The defendant agreed to pay all restitution on whatever came in to the County Attorney's Office, the State agreed not to file any further forgery charges that pre-dated 7/9/97. The State Breached this agreement by filing these charges.

Conclusion

Therefore the defendant is entitled to a dismissal. And the amount of restitution to be affixed to the amount of restitution ordered in Judge Glasman's Court, as per agreement.

Respectfully submitted, this 30th day
of November, 1998

Kevin Andrew Unck

Kevin Andrew Unck

Attorney Pro Se

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing, Appellant's Brief, by depositing the same in the U.S. Mail, postage prepaid, on the 30th day of November 1998 addressed to the following:

~~Gary R. Heward
2380 Washington Blvd 2nd Fl.
Ogden, Utah 84401~~

Appellate Clerk's Office
450 South State Street
PO Box 140230
Salt Lake City, Utah 84114-0230

Dated this 30th day of November, 1998

By: Kevin Andrew Unck
Kevin Andrew Unck
Attorney Pro Se

1 IN THE DISTRICT COURT OF WEBER COUNTY

2 STATE OF UTAH

3 *****

4 STATE OF UTAH,)

5 Plaintiff,)

6 vs.)

7 KEVIN A. UNCK,)

8 Defendant.)

REPORTER'S TRANSCRIPT
FROM VIDEO RECORDING

CASE NO. 971900613,
971900641, 971900764

9 *****

10 Be it remembered that this matter came on regularly
11 for hearing before the Honorable Michael J. Glasmann, Judge,
12 sitting at Ogden, Utah, on the 9th day of July, 1997.

13 Whereupon, the following proceedings were had, to
14 wit:

15 *****

16 APPEARANCES:

17 FOR THE PLAINTIFF: MR. R. DEAN SAUNDERS

18 FOR THE DEFENDANT: MR. STEPHEN A. LAKER

19
20
21
22
23 **FILED**

24 Utah Court of Appeals

25 DEC 1 - 1998

Julia D'Alesandro
Clerk of the Court

1 (CHANGE OF PLEA)

2 THE COURT: Let's go to items four, five, and six
3 on the calendar, State of Utah versus Kevin Unck, cases 613,
4 641, and 674 (sic).

5 MR. LAKER: I think he's in custody.

6 THE COURT: Mr. Unck? Kevin Unck. Kevin Unck.

7 MR. LAKER: Your Honor, I might indicate that this
8 is Mr. Miles' case. He's asked me to handle it for him. I
9 believe there are three different files in this.

10 THE COURT: There are.

11 MR. LAKER: Three different file numbers.

12 THE COURT: Right.

13 MR. LAKER: It's my understanding -- when he gets
14 here. It's my understanding that in case number 641,
15 Mr. Unck will enter a plea of guilty to a single count of
16 Forgery, a Third Degree Felony.

17 In case number 613, he will enter a plea of guilty to
18 Count I, Forgery, a Third Degree Felony; and Count III,
19 Forgery, a Third Degree Felony; and the State will dismiss
20 Count II, a Third Degree Felony Theft.

21 In case number 764, Mr. Unck will enter a plea of
22 guilty to Count I, Possession of a Controlled Substance,
23 Third Degree Felony, and the State will dismiss the
24 remaining counts -- that's Counts II, III, IV, V, VI, and
25 VII. So he'll be entering a plea of guilty to three third

1 degree felonies. It's my understanding --

2 THE COURT: Wait a minute.

3 MR. SAUNDERS: Actually four.

4 THE COURT: You told me about four of them.

5 MR. LAKER: Excuse me, that's right. Four. Excuse
6 me. I just have a difficult time counting.

7 THE COURT: That's okay.

8 MR. LAKER: It's my understanding the State has
9 agreed to take no position at the time of sentencing with
10 regard to the issue of whether or not these should be run
11 concurrent or consecutively.

12 MR. SAUNDERS: That's correct.

13 MR. LAKER: And he has agreed to pay restitution on
14 all cases.

15 MR. UNCK: (Nods head up and down.)

16 THE COURT: Is that the understanding of the State?

17 MR. SAUNDERS: Yes.

18 THE COURT: Is that the negotiation as far as you
19 understand it, Mr. Unck?

20 MR. UNCK: Yes, sir.

21 THE COURT: Anything else been promised to you that
22 ought to be disclosed at this time?

23 MR. UNCK: No, sir.

24 THE COURT: Okay. Do you speak, read, and write
25 the English language?

1 MR. UNCK: Yes, sir.

2 THE COURT: Do you have a clear mind today?

3 MR. UNCK: Yes, sir.

4 THE COURT: Are you under the influence of any
5 alcohol or drugs?

6 MR. UNCK: No, sir.

7 THE COURT: Are you under the influence of any
8 medication that would be clouding your thinking at this
9 time?

10 MR. UNCK: No, sir.

11 THE COURT: Do you understand that you don't have
12 to plead guilty to any of these charges and that you're
13 entitled to a separate trial in each of these separate
14 cases, and that each of those trials could be before a judge
15 or a jury?

16 MR. UNCK: Yes, sir.

17 THE COURT: Do you understand that in each case, if
18 you went to trial, that you could confront the State's
19 witnesses against you, call your own witnesses and have them
20 come to court, that you could testify in your own behalf,
21 but could not be made to testify against yourself?

22 MR. UNCK: Yes.

23 THE COURT: Do you also understand that in each
24 case if you went to trial and you were convicted you'd have
25 the right to an appeal from what had occurred during the

1 trial, and that if you give up your right to a trial, you
2 give up that right of appeal?

3 MR. UNCK: Right. Yes, sir.

4 THE COURT: You're presumed to be innocent. The
5 State has the burden of proving your guilt beyond a
6 reasonable doubt. In order to do that, the State has to
7 prove each element of the offense that you're charged with.

8 Taking case number 613 first, there it's anticipated
9 you'd plead guilty to two separate third degree felony
10 forgeries. Under Count I -- and do you have those
11 informations with you, Mr. Laker?

12 MR. LAKER: I do, yes.

13 THE COURT: Okay. Under Count I, the State would
14 have to prove there that on the 2nd of February, 1997, you
15 made, executed, authenticated, issued, transferred,
16 published, or uttered a writing; to wit, a security
17 agreement, so that the writing of, or making, completion,
18 execution, authentication, issuance, transference,
19 publication, or utterance of that security agreement
20 purported to be the act of another. Do you understand?

21 MR. UNCK: Yes.

22 THE COURT: Security agreement. What are we
23 talking about here?

24 MR. SAUNDERS: He went into R.C. Willey's, Your
25 Honor, filled out a credit application.

1 THE COURT: Okay.

2 MR. SAUNDERS: Got some property from that; used a
3 false name.

4 THE COURT: All right. And so then under
5 Count III, the date is different, 1st of February, 1997;
6 the language is the same. So the elements are the same on
7 Count III as Count I with the exception of the date. Does
8 this --

9 MR. SAUNDERS: The (unintelligible) are the same --
10 are different, Your Honor. The first one, I believe, was
11 Sam's Warehouse.

12 MR. LAKER: Yes.

13 MR. SAUNDERS: The second one was R.C. Willey.

14 THE COURT: Do you understand that, sir?

15 MR. UNCK: Yes, sir.

16 THE COURT: Okay. You understand that's what the
17 State would have to prove against you?

18 MR. UNCK: (Nods head up and down.)

19 THE COURT: Okay. Are you pleading guilty to those
20 charges because you're, in fact, guilty?

21 MR. UNCK: Yes, sir.

22 THE COURT: Okay. What did happen in that case?

23 MR. UNCK: Went in and filled out a credit
24 application. Actually it was to obtain drugs and stuff
25 instead of merchandise.

1 THE COURT: Because you wanted the property to turn
2 around and sell it?

3 MR. UNCK: Yeah.

4 THE COURT: Okay. And you did that at the Sam's
5 Warehouse and at R.C. Willey?

6 MR. UNCK: There was no merchandise taken from R.C.
7 Willey. That was from Sam's Warehouse.

8 THE COURT: Okay.

9 MR. SAUNDERS: A credit application, however, was
10 still made under a false name.

11 THE COURT: Is that correct?

12 MR. UNCK: Yes, sir.

13 THE COURT: All right. Then going to case number
14 641, there we have a single count of Forgery, and there the
15 State would have to prove that on the 2nd of February, 1997,
16 you, with a purpose to defraud Shopko or a Michael
17 Beaudoin -- Beaudoin, altered, made, uttered, completed,
18 transferred, or issued a writing of another without his
19 authority so that it purported to be the act of that person.

20 Is this a situation where you had a check of
21 Mr. Beaudoin's?

22 MR. UNCK: Yes, sir.

23 THE COURT: And you attempted to pass that at
24 Shopko?

25 MR. UNCK: Yes, sir.

1 THE COURT: Representing yourself to be that other
2 person?

3 MR. UNCK: Yes.

4 THE COURT: Okay. So, again, you're pleading to
5 this charge because you're, in fact, guilty?

6 MR. UNCK: Yes, I am.

7 THE COURT: State want to add anything to that?

8 MR. SAUNDERS: No.

9 THE COURT: Okay. Then finally in case 764, Count
10 I involves a Third Degree Felony, Possession of a Controlled
11 Substance. There the State would have to prove that on the
12 10th of June, 1997, you intentionally and knowingly
13 possessed or used a controlled substance; to wit,
14 methamphetamine.

15 Do you understand what the State would have to prove
16 there?

17 MR. UNCK: Yes, sir.

18 THE COURT: Are you pleading guilty to that charge
19 because you're, in fact, guilty?

20 MR. UNCK: Yes, sir.

21 THE COURT: And what happened there?

22 MR. SAUNDERS: It was a case, Your Honor, where he
23 passed another bad check at Comfort Suites. The sheriff's
24 office went to investigate, went to the room, they were let
25 in, there were drugs inside the room.

1 THE COURT: Is that accurate?

2 MR. SAUNDERS: Found Mr. Unck hanging out the
3 window.

4 THE COURT: Okay. You were in possession of
5 methamphetamine then at that time?

6 MR. UNCK: Yes, sir.

7 THE COURT: All right. Is anyone forcing you or
8 coercing you to plead guilty to these charges?

9 MR. UNCK: No, sir.

10 THE COURT: Okay. Do you understand that the
11 maximum penalty for each of these four third degree felonies
12 is zero to five years at the Utah State Prison, and up to a
13 \$5,000 fine?

14 MR. UNCK: Yes, sir.

15 THE COURT: And that the maximum penalty could be
16 imposed for each one of these?

17 MR. UNCK: Yes.

18 THE COURT: Okay. You've talked to your attorney
19 about what you're doing?

20 MR. UNCK: Yes.

21 THE COURT: Do you have a written statement,
22 Mr. Laker?

23 MR. LAKER: We don't, Your Honor.

24 THE COURT: It's not required. Do you have any
25 questions for the Court before entering your pleas?

1 MR. UNCK: No. There's -- there could be some more
2 checks out there. There's like checks that was taken that I
3 don't know who even got. I don't know whatever come of
4 them.

5 THE COURT: Does the State agree at least as far
6 as -- well, do you agree that you won't file any further
7 forgery charges that pre-date this date?

8 MR. SAUNDERS: I'm -- I'm not sure, Your Honor. We
9 never talked about that particular thing. We'd at least
10 request restitution on those outstanding checks as well.

11 MR. LAKER: He has agreed to pay restitution on
12 everything that he did.

13 THE COURT: Even that which has not been charged,
14 but could be charged by the county attorney's office?

15 MR. UNCK: Yes. There is no problem with that.

16 THE COURT: With that promise then on the record,
17 do you agree not to file other forgery charges pre-dating
18 this?

19 MR. SAUNDERS: Yes.

20 THE COURT: Okay.

21 MR. SAUNDERS: Out of Weber County. We don't
22 know if there's any in different --

23 THE COURT: You understand that? That's limited
24 only to this county attorney's office's jurisdiction.

25 MR. UNCK: Yes.

1 THE COURT: All right. Anything else you had a
2 question about?

3 MR. UNCK: No, sir.

4 THE COURT: Okay. As to the charge then in case
5 613 of -- under Count I of the Third Degree Felony, Forgery,
6 how do you plead?

7 MR. UNCK: Guilty.

8 THE COURT: Count II, a Third Degree Felony,
9 Forgery, how do you plead?

10 MR. UNCK: Guilty.

11 THE COURT: State move to dismiss Count II, a Third
12 Degree Felony, Theft?

13 MR. SAUNDERS: Yes.

14 THE COURT: Okay. In the next case, 641, single
15 count, Third Degree Felony, Forgery, how do you plead?

16 MR. UNCK: Guilty.

17 THE COURT: And as to case 764, Count I, a Third
18 Degree Felony, Possession of a Controlled Substance,
19 Methamphetamine, how do you plead?

20 MR. UNCK: Guilty.

21 THE COURT: Court finds that you've knowingly and
22 voluntarily entered your pleas of guilty to each of those
23 third degree felonies. You have 30 days from today within
24 which to file a motion to withdraw your pleas of guilty. If
25 you don't file that in 30 days, it's not timely. Do you

1 understand that?

2 MR. UNCK: Yes, sir.

3 THE COURT: State move to dismiss counts 2, 3, 4, 5
4 6, and 7 from case 764?

5 MR. SAUNDERS: Yes.

6 THE COURT: Okay. They'll all be dismissed. We
7 need to continue these cases for sentencing.

8 PROBATION: August 6, Your Honor?

9 THE COURT: Okay. We'll go to August 6 at
10 2:00 p.m. for sentencing.

11 MR. UNCK: Okay. I have one question. In the
12 stuff that was taken, there was a Horizon card that belongs
13 to myself. I have no knowledge of where that is located at
14 or if they have it in evidence. I don't know. There was --
15 I had \$50 or \$49 in my wallet that they took that's in
16 evidence, and there's property in evidence. I don't know
17 what's going to happen with that. What --

18 THE COURT: I would think at this point you'll need
19 to go through your attorney to make a request for the
20 release of that.

21 MR. LAKER: Yeah. I think once we get -- once we
22 dispose of the case then we can make application for the
23 return of those items.

24 THE COURT: All right.

25 MR. UNCK: Okay.

1 THE COURT: Okay. That will be all then.

2 MR. UNCK: All right. Thank you.

3 (WHEREUPON, at this time proceedings conclude.)

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CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF WEBER)

I, Laurie Shingle, do hereby certify that the foregoing
13 pages of transcript constitute a true and accurate
record of the video-taped proceedings to the best of my
knowledge and ability as a Certified Shorthand Reporter
for the Second Judicial District Court of Weber County
in and for the State of Utah.

Dated at Ogden, Utah, this the 26th day of May,
1998.


Laurie Shingle, C.S.R.

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IN THE DISTRICT COURT OF WEBER COUNTY

STATE OF UTAH

STATE OF UTAH)	
)	
PLAINTIFF,)	
)	
VS.)	HEARING TRANSCRIPT
)	
KEVIN A. UNCK)	CASE NO. 971901220

BE IT REMEMBERED THAT THIS MATTER CAME ON REGULARLY FOR
HEARING BEFORE THE HONORABLE STANTON M. TAYLOR, JUDGE, SITTING AT
OGDEN, UTAH ON 11-24-97.

APPEARANCES:

FOR THE PLAINTIFF:	L. DEAN SAUNDERS
FOR THE DEFENDANT:	JOHN T. CAINE

TRANSCRIBED BY DEAN OLSEN, CSR
2525 GRANT AVE.
OGDEN, UTAH 84401
PHONE (801) 395-1056

COPY

FILED
Utah Court of Appeals
DEC 1 - 1998
Julia D'Alesandro
Clerk of the Court

1 OGDEN, UTAH NOVEMBER 24, 1997 3:15 P.M.

2 MR. CAINE: THE NEXT MATTER IS THE PRISON MATTER,
3 JUDGE, AND THAT IS ON PAGE -- IF I CAN FIND THAT ONE FOR
4 YOU -- PAGE 4, NUMBER 12.

5 THE COURT: STATE VERSUS KEVIN UNCK.

6 MR. CAINE: OKAY. THIS IS MR. UNCK, JUDGE, AND
7 WE'RE ON -- THIS CASE ISN'T SET FOR TRIAL UNTIL JANUARY, BUT
8 IT'S A CASE WE WANT TO TRY AND RESOLVE TODAY BECAUSE HE HAS A
9 BOARD HEARING ON THE 4TH OF DECEMBER. AND LET ME MAKE A
10 RATHER SPECIFIC RECORD ON THIS, IF I MIGHT. WE ARE GOING TO
11 PLEAD GUILTY TODAY TO THE TWO COUNTS, BOTH THIRD DEGREE
12 FELONIES. ONE IS A FORGERY AND ONE IS A THEFT AS CHARGED.
13 THE STATE IS -- THROUGH MR. HEWARD IS MAKING THE FOLLOWING
14 REPRESENTATIONS: ONE, THAT THEY WILL -- WE'LL ASK TO BE
15 SENTENCED TODAY, AND THEY WILL RECOMMEND THAT THESE CHARGES
16 RUN CONCURRENTLY WITH EACH OTHER AND CONCURRENT WITH WHAT HE'S
17 ALREADY THERE ON.

18 SECONDLY, THAT ANY OTHER CHARGES THAT ARE CURRENTLY
19 PENDING IN WEBER COUNTY -- AND BY PENDING, THEY HAVE NOT BEEN
20 CHARGED, BUT THEY'VE BEEN INVESTIGATED, AND THAT FRANKLY IS IN
21 CONNECTION WITH SOME OF THE INFORMATION THAT'S CONTAINED HERE,
22 THAT THEY WILL NOT BE CHARGED. AND, IN FACT, ANYTHING ELSE
23 THAT MR. UNCK TELLS THEM ABOUT, AND HE'LL MAKE A LIST SO THAT
24 THEY HAVE IT, WILL ALSO NOT BEEN CHARGED.

25 ALSO, SO THAT THE COURT IS CLEAR, BECAUSE MR. UNCK A FEW

1 MONTHS AGO PLED GUILTY IN JUDGE GLASMANN'S COURT WITH WHAT HE
2 UNDERSTOOD TO AND HE PLED TO MULTIPLE COUNTS ARISING AT THE
3 SAME TIME, TO THIS SAME KIND OF CONCURRENT, HE UNDERSTOOD THAT
4 THIS NEGOTIATION IN TERMS OF NOT FILING ANYTHING ELSE WAS DONE
5 THEN. I GOT A TAPE OF THE PLEA SESSION, NOT THE SENTENCING,
6 AND IN THE PLEA SESSION IT DOES NOT INDICATE THAT THE STATE
7 WASN'T GONNA FILE OTHER CHARGES. HE TELLS ME THAT IN THE
8 SENTENCING SESSION, IT DID, AND WE ARE RESERVING IN OUR
9 THIRTY-DAY PERIOD THAT WE'D HAVE TO WITHDRAW A PLEA, JUST SO
10 YOU'LL KNOW, IF IN FACT THAT SENTENCING TAPE INDICATES THAT
11 THAT WAS THE REPRESENTATION MADE THAT THERE WOULDN'T BE ANY
12 MORE FILED, THEN WE MAY REVISIT THIS, JUST SO YOU'LL KNOW.
13 BUT WE WANT TO GET THIS DONE TODAY SO IF IT STAYS THIS WAY, HE
14 CAN GET TO THE BOARD AND NOT HAVE TO HAVE HIS BOARD DATE
15 DELAYED. IS THAT A FAIR --

16 MR. UNCK: YES.

17 MR. CAINE: -- REPRESENTATION OF WHAT WE'RE DOING?
18 I SPOKE TO MR. HEWARD MYSELF TODAY. HIS MEMORY IS THAT THERE
19 WAS NOT ANYTHING ELSE SAID AT SENTENCING. MR. UNCK'S DIFFERS,
20 BUT WE'RE GONNA HAVE TO GET THE TAPE OF THAT SESSION. SO
21 HAVING SAID THAT, THAT'S WHAT WE'RE PREPARED TO DO TODAY.

22 THE COURT: IS THAT CORRECT, MR. UNCK?

23 MR. UNCK: YES, SIR.

24 MR. SAUNDERS: THAT'S MY UNDERSTANDING, YOUR HONOR,
25 WE'RE NOT DOING THE (UNINTELLIGIBLE) WHAT I UNDERSTAND IS THAT

1 IF THERE'S OTHER CHARGES LIKE THIS, WE WON'T FILE THOSE. AND
2 I MEAN IT'S NOT A COMPLETE STATEMENT THAT WE'RE NOT GONNA FILE
3 ANY OTHER CHARGE THAT HE MIGHT HAVE COMMITTED, CORRECT,
4 MISTER --

5 MR. CAINE: WELL, ANYTHING TO DO WITH THEFTS AND
6 FORGERIES --

7 MR. SAUNDERS: WE UNDERSTAND THAT --

8 MR. CAINE: -- THAT'S BEEN GOING ON, RIGHT.

9 MR. SAUNDERS: -- IT WOULD BE THE SAME TYPES OF
10 CHARGES, AND WE'RE AGREEABLE WITH THAT, YOUR HONOR.

11 MR. CAINE: RIGHT. THERE AREN'T ANYTHING -- THERE
12 ISN'T ANYTHING ELSE.

13 THE COURT: OKAY.

14 MR. SAUNDERS: HE'S ALSO AGREED TO PAY FULL RESTITUTION
15 I THINK IN ALL THE CHARGES.

16 MR. CAINE: THAT'S CORRECT.

17 THE COURT: CHARGED OR NOT CHARGED.

18 MR. CAINE: RIGHT. ACTUALLY, HE DID THAT IN JUDGE
19 GLASMANN'S COURT, TOO. THAT IS ON THE TAPE, SO -- BUT THAT'S
20 FINE.

21 THE COURT: ALL RIGHT. YOU UNDERSTAND IF YOU PLEAD
22 GUILTY TO THE THEFT AND FORGERY, YOU'LL BE ADMITTING WHAT
23 YOU'VE BEEN CHARGED WITH.

24 MR. UNCK: YES, SIR.

25 THE COURT: HAS ANYBODY MADE TO YOU ANY PROMISES

1 OTHER THAN WHAT WE'VE TALKED ABOUT HERE?

2 MR. UNCK: NO, SIR.

3 THE COURT: HAS ANYBODY THREATENED YOU AND SAID YOU
4 HAD TO PLEAD GUILTY?

5 MR. UNCK: NO, SIR.

6 THE COURT: SO ARE YOU PRESENTLY UNDER THE INFLUENCE
7 OF ANY KIND OF ALCOHOL OR DRUGS?

8 MR. UNCK: NO, SIR.

9 THE COURT: BETTER NOT BE.

10 MR. UNCK: NO. NOT EVER AGAIN.

11 THE COURT: OKAY.

12 MR. UNCK: THAT'S WHAT GOT ME IN MY TROUBLE.

13 THE COURT: ARE YOU SUFFERING FROM ANY KIND OF
14 MENTAL PROBLEMS --

15 MR. UNCK: NO.

16 THE COURT: -- THAT WOULD MAKE THIS DIFFICULT TO
17 UNDERSTAND OR DECIDE?

18 MR. UNCK: NO.

19 THE COURT: YOU UNDERSTAND THAT BY PLEADING GUILTY,
20 YOU ARE GIVING UP CERTAIN CONSTITUTIONAL RIGHTS.

21 MR. UNCK: YES, SIR.

22 THE COURT: GIVING UP A RIGHT TO HAVE A TRIAL BEFORE
23 AN IMPARTIAL JURY. DO YOU UNDERSTAND?

24 MR. UNCK: YES, SIR, I DO.

25 THE COURT: YOU'RE GIVING UP A RIGHT AT THAT TRIAL

1 TO HAVE THE JURY LISTEN TO THE EVIDENCE AND DECIDE BY
2 UNANIMOUS CONCURRENCE WHETHER YOU'RE GUILTY OR NOT.

3 MR. UNCK: YES, SIR.

4 THE COURT: YOU'RE GIVING UP A RIGHT AT THAT TRIAL
5 TO HAVE ME INSTRUCT THE JURY THAT YOU'RE PRESUMED TO BE
6 INNOCENT.

7 MR. UNCK: YES, SIR.

8 THE COURT: YOU'RE GIVING UP A RIGHT TO CONFRONT AND
9 CROSS-EXAMINE THE WITNESSES AGAINST YOU.

10 MR. UNCK: YES, SIR.

11 THE COURT: YOU'RE GIVING UP A RIGHT TO SUBPOENA
12 WITNESSES IN TO TESTIFY FOR YOU.

13 MR. UNCK: RIGHT.

14 THE COURT: YOU'RE GIVING UP A RIGHT TO REQUIRE THAT
15 THE STATE PROVE YOU'RE GUILTY BEYOND ANY REASONABLE DOUBT.

16 MR. UNCK: YES, SIR.

17 THE COURT: YOU'RE GIVING UP A RIGHT TO REMAIN
18 SILENT. YOU DON'T HAVE TO PLEAD GUILTY. YOU DON'T HAVE TO
19 ADMIT ANYTHING. DO YOU UNDERSTAND?

20 MR. UNCK: YES, SIR.

21 THE COURT: IF YOU HAD A TRIAL AND YOU DIDN'T LIKE
22 HOW IT TURNED OUT, YOU COULD ALWAYS APPEAL. IF YOU PLEAD
23 GUILTY, YOU PROBABLY DON'T HAVE A RIGHT TO APPEAL.

24 MR. UNCK: RIGHT.

25 THE COURT: AND DO YOU UNDERSTAND IF YOU PLEAD

1 GUILTY HERE TODAY AND THEN LATER CHANGE YOUR MIND, YOU HAVE TO
2 MAKE A MOTION TO SET ASIDE THIS PLEA WITHIN THIRTY DAYS;
3 OTHERWISE, YOU'VE LOST YOUR RIGHT TO ASK.

4 MR. UNCK: RIGHT, YES, SIR.

5 THE COURT: AND THAT'S SUBJECT OF COURSE TO THE
6 PREVIOUS STATEMENT MADE BY COUNSEL.

7 MR. CAINE: RIGHT. AND WE'LL DO THAT WITHIN THIRTY
8 DAYS IF WE NEED TO DO IT.

9 THE COURT: YEAH, OKAY. AND YOU UNDERSTAND THAT
10 EVEN IF YOU ASK TO SET ASIDE A GUILTY PLEA, APART FROM WHAT
11 WE'VE TALKED ABOUT HERE --

12 MR. CAINE: RIGHT.

13 THE COURT: -- YOU UNDERSTAND I CAN SAY NO.

14 MR. UNCK: RIGHT, YES, SIR.

15 THE COURT: OKAY. ALL RIGHT. YOU'VE GONE OVER THIS
16 CAREFULLY WITH HIM, MR. CAINE?

17 MR. CAINE: I HAVE, YOUR HONOR. I'VE KNOWN KEVIN
18 FOR SOME TIME AND HE'S -- HE KNOWS WHAT HE WANTS TO DO ON
19 THIS.

20 THE COURT: TAKING INTO ACCOUNT ALL CIRCUMSTANCES,
21 INCLUDING THE STRENGTH OF THE STATE'S CASE AND SO ON, DO YOU
22 BELIEVE THIS IS IN HIS BEST INTERESTS?

23 MR. CAINE: YEAH, THIS IS A CASE THAT HE'S -- THAT
24 HE'S ADMITTED IN THE PAST. HE JUST THOUGHT IT HAD ALREADY
25 BEEN LUMPED IN WITH THE OTHER CHARGES --

1 THE COURT: THE OTHER CHARGES.

2 MR. CAINE: -- SO THAT'S WHAT HAPPENED.

3 THE COURT: OKAY.

4 MR. CAINE: YEAH.

5 THE COURT: ALL RIGHT. IS THERE A FACTUAL BASIS FOR
6 THE PLEA THEN?

7 MR. CAINE: THERE IS. DO YOU WANT ME TO DO IT,
8 DEAN?

9 MR. SAUNDERS: SURE.

10 MR. CAINE: THIS IS A SITUATION WHERE HE OBTAINED A
11 DRIVER'S LICENSE THAT ACTUALLY WAS ALTERED. BY THE NAME OF --
12 A GUY BY THE NAME OF VINCENT HARRY, TOOK THAT OUT AND USED
13 THAT, FILLED OUT AN APPLICATION FOR CREDIT AT Z. -- EXCUSE ME,
14 R.C. WILLEY, AND ALSO BASED UPON THAT CHARGED SOME FURNITURE.
15 AND THAT'S THE SUBJECT OF THE THEFT.

16 THE COURT: I SEE.

17 MR. CAINE: THAT IT WAS THE RESULT OF THE FORGERY
18 AND IT WASN'T OBVIOUSLY MISTER -- MR. HENRY.

19 THE COURT: IS THAT WHAT HAPPENED?

20 MR. UNCK: YES, SIR.

21 THE COURT: ALL RIGHT. COURT FINDS THE DEFENDANT'S
22 ENTERED INTO THE NEGOTIATION INTELLIGENTLY AND UPON ADVICE OF
23 COMPETENT COUNSEL. HE'S VOLUNTARILY AND INTELLIGENTLY WAIVED
24 HIS CONSTITUTIONAL RIGHTS. AND THE COURT FINDS THERE TO BE A
25 FACTUAL BASIS FOR THE PLEA. WILL ACCORDINGLY ALLOW HIM TO

1 WITHDRAW FORMER PLEAS OF NOT GUILTY TO THE CHARGES. ALLOW HIM
2 TO PROCEED WITH THE PLEAS UNLESS THERE'S SOME LEGAL REASON --

3 MR. CAINE: THERE IS NOT, YOUR HONOR.

4 THE COURT: MR. UNCK, TO THE CHARGE OF A THIRD
5 DEGREE FELONY THEFT, HOW DO YOU PLEAD?

6 MR. UNCK: GUILTY.

7 THE COURT: AND TO THE CHARGE OF A THIRD DEGREE
8 FORGERY, HOW DO YOU PLEAD?

9 MR. UNCK: GUILTY.

10 THE COURT: OKAY. NOW, YOU UNDERSTAND IF YOU WANT
11 ME TO IMPOSE SENTENCE TODAY, THAT THERE'S A LAW THAT SAYS I
12 CAN'T, THAT I HAVE TO GIVE YOU AT LEAST 48 HOURS BEFORE
13 SENTENCE IS IMPOSED. AND THAT THAT PERIOD OF TIME CAN BE NO
14 LONGER THAN 45 DAYS. DO YOU UNDERSTAND FOR ME TO IMPOSE
15 SENTENCE TODAY, YOU HAVE TO GIVE UP THAT RIGHT TO THAT
16 ADDITIONAL TIME?

17 MR. UNCK: RIGHT, I DO, I AGREE WITH THAT.

18 MR. CAINE: THAT'S WHAT YOU WANNA DO.

19 THE COURT: ALL RIGHT.

20 MR. CAINE: WE DO WANNA BE SENTENCED TODAY, YOUR
21 HONOR.

22 THE COURT: ALL RIGHT. ANYTHING -- ANYTHING
23 FURTHER, MR. CAINE?

24 MR. CAINE: NO. JUST THE RECOMMENDATION OF
25 CONCURRENCE.

1 THE COURT: MR. SAUNDERS?

2 MR. SAUNDERS: NO.

3 THE COURT: MR. UNCK, IT'S THE ORDER OF THE COURT
4 THAT YOU BE COMMITTED TO PRISON FOR A PERIOD OF NOT LESS THAN
5 ZERO NOR MORE THAN FIVE YEARS ON EACH OF THE TWO CHARGES.
6 THEY MAY RUN CONCURRENTLY WITH EACH OTHER AND WITH ANY OTHER
7 CHARGE THAT YOU'RE PRESENTLY SERVING.

8 MR. SAUNDERS: YOUR HONOR, FROM WHAT I CAN TELL, THE
9 PROPERTY WAS NOT RECOVERED IN THIS CASE, IS THAT CORRECT?

10 MR. CAINE: THAT'S RIGHT, THERE IS RESTITUTION.

11 MR. SAUNDERS: I BELIEVE THE RESTITUTION AMOUNT, YOUR
12 HONOR, WOULD BE 1,000 -- \$1,013.50 TO R.C. WILLEY'S.

13 MR. CAINE: WE AGREE WITH THAT. OBVIOUSLY, THERE'S
14 GONNA BE SOME OTHER RESTITUTION ON CASES THAT AREN'T FILED.

15 THE COURT: ALL RIGHT.

16 MR. CAINE: AND THEY CAN SUBMIT THAT. IF WE COULD
17 ASK MARYKAY TO GET THIS ORDER DOWN A.S.A.P. SO THAT THEY'LL
18 HAVE IT. HIS BOARD HEARING IS SCHEDULED A WEEK FROM THURSDAY
19 AND WITH THANKSGIVING IN THERE, I'M CONCERNED THAT IT GETS
20 DOWN THERE, SO THEY NEED TO HAVE THIS OR THEY'LL DELAY HIS
21 BOARD OF PARDONS HEARING.

22 THE CLERK: DO YOU KNOW WHO YOUR CASE WORKER IS?

23 MR. UNCK: VERNEL -- SHE'S ON B. BLOCK.

24 A VOICE: I SHOW LARRY CHAIN AS HIS AGENT DOWN
25 THERE.

1 THE CLERK: IS WHO?
2 A VOICE: LARRY CHAIN. YOU GIVE IT TO HIM, HE
3 SHOULD BE ABLE TO GET IT TO THE BOARD.
4 A VOICE: HE'S ON THE SAME BLOCK.
5 THE CLERK: OKAY.
6 MR. CAINE: OKAY.
7 THE COURT: OKAY.
8 MR. CAINE: THANK YOU, JUDGE.
9 MR. UNCK: THANK YOU.
10 THE COURT: THANK YOU.
11 THE CLERK: WHAT WAS RESTITUTION AGAIN?
12 MR. SAUNDERS: \$1,013.50.
13 THE COURT: THAT WILL BE PLUS RESTITUTION ON THE
14 UNFILED MATTERS.
15 MR. CAINE: THAT'S ALL I CAN DO AT THE MOMENT,
16 JUDGE.
17 *****
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CERTIFICATE

STATE OF UTAH)
) SS
COUNTY OF WEBER)

THIS IS TO CERTIFY THAT THE FOREGOING 11 PAGES OF
TRANSCRIPT CONSTITUTE A TRUE AND ACCURATE RECORD OF THE
PROCEEDINGS TO THE BEST OF MY KNOWLEDGE AND ABILITY AS A
CERTIFIED SHORTHAND REPORTER IN AND FOR THE STATE OF UTAH.

DATED AT OGDEN, UTAH THIS 16TH DAY OF JUNE 1998.



DEAN OLSEN, CSR

1 IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY

2 STATE OF UTAH, OGDEN DEPARTMENT

3 *****

4	STATE OF UTAH,)	
)	
5	Plaintiff,)	REPORTER'S TRANSCRIPT
)	FROM VIDEO RECORDING
6	vs.)	
)	CASE NO. 971901220
7	KEVIN A. UNCK,)	
)	
8	Defendant.)	

9 *****

10 Be it remembered that this matter came on regularly
11 for hearing before the Honorable Stanton M. Taylor, Judge,
12 sitting at Ogden, Utah, on the 17th day of August, 1998.

13 Whereupon, the following proceedings were had, to
14 wit:

15 *****

16 APPEARANCES:

17 FOR THE PLAINTIFF: MR. GARY R. HEWARD

18 FOR THE DEFENDANT: MR. STEPHEN A. LAKER

19
20
21
22
23 **FILED**

24 Utah Court of Appeals

25 DEC 1 - 1998

Julia D'Alesandro
Clerk of the Court

1 MR. LAKER: Could we do the Kevin Unck matter?

2 THE COURT: Yeah. State of Utah versus Kevin A.
3 Unck, cases 36, 37, 38 and 39.

4 (Mr. Unck enters the courtroom.)

5 MR. LAKER: Your Honor, this appears on the
6 calendar on the defendant's pro se motion. It has to do
7 with -- with a motion to dismiss a new count of forgery that
8 was filed. His -- I -- I understand this was continued so
9 that both Mr. Heward and myself could be here because while
10 this wasn't my case and -- and none of these cases were my
11 cases, apparently I was here when the sentencing took place.

12 I would only -- I can only say to the Court that I
13 believe that the transcript speaks for itself with regard to
14 what happened here and I'll have to defer to Mr. Heward
15 to -- to show us why a pre-dating forgery would not be part
16 of that negotiation, what was -- what was said in open
17 court.

18 THE COURT: Go ahead, Mr. Heward.

19 MR. HEWARD: Thank you, Your Honor.

20 Your Honor, actually -- and I believe the position's
21 already been raised, case law -- what we're here on the
22 motion specifically filed on is 971901220. That file would
23 indicate that the defendant, back on November 24, 1997,
24 entered guilty pleas to Count I and II, sentenced by Your
25 Honor to zero to five at the Utah State Prison

1 consecutive -- currently with the other offenses that he was
2 doing.

3 The defendant then sometime between November 24th and
4 March 2nd, 1998, filed a motion -- actually I believe it was
5 filed through or with the assistance of the public
6 defenders. It appeared here on March 2nd, 1998, again in
7 front of Your Honor. The defendant withdrew his motion.

8 So you sentenced him, and by our understanding of the
9 law, would have lost jurisdiction of him when that judgment
10 would have been signed in November. However, he filed a
11 motion and came back in here and then on his own moved to
12 withdraw the motion, not ever giving Your Honor the
13 opportunity to decide or get to the merits, which we don't
14 believe is appropriate here, even though I don't -- I think
15 the merits provide a bar as well. But we don't think it's
16 appropriate to get to the merits because there is no
17 jurisdiction here.

18 Rule 22(e) says that someone that is sentenced
19 improperly, that Your Honor never lose jurisdiction of the
20 case. Mr. Unck was convicted of two 3rd degree felonies and
21 Mr. Unck was sentenced on two 3rd degree felonies, and if in
22 fact he has a remedy that would need to be brought through
23 the writ process.

24 Having said that, going to the documents that Mr. Unck
25 himself have filed, which are a motion to dismiss filed pro

1 se, if you go to that transcript you'll note -- and I have
2 the three other files that Mr. Unck was before the court on
3 in 1997. They are ending files 764, 613 and 641. There are
4 forgeries there; however, most of those forgeries are checks
5 that Mr. Unck was out and forging during a different time
6 period in 1997. And there are also some drug charges.

7 When he came up with the sentencing on those cases, and
8 Mr. Saunders was present, and I go to his document which is
9 the transcript that I assume has been accepted by the Court,
10 it starts out: Mr. Unck -- and we don't know the question
11 that the Court asked, but it starts out, "Mr. Unck: No" --
12 and then this is Mr. Unck talking -- "there could be some
13 more checks out there." Not more forgeries, not more
14 thefts, some more checks out there, which is consistent with
15 what he was being sentenced on.

16 "There's like checks that were taken that I don't even
17 know who got." Again, Mr. Unck referring to checks being
18 taken. "I don't know what ever came of them."

19 And then there's the colloquy that Your Honor is
20 undoubtedly familiar with where the Court, not Your Honor,
21 different district judge goes through, and the Court itself,
22 not Mr. Unck, transposes forgery for checks. And as you
23 well know there are many ways that forgeries can be
24 committed. Mr. Unck was talking about checks.

25 So the Court goes through it and ultimately gets down

1 to the point in time where they say -- Mr. Saunders says,
2 "I'm not sure, Your Honor. We never talked about this
3 particular thing," talking about whether or not we'd be
4 bound to not file other checks.

5 "We'd at least ask restitution."

6 Mr. Laker chimes in, "He's agreed to pay restitution."

7 "The Court: Even that which has not been charged but
8 could be charged by the County Attorney's Office?"

9 Mr. Unck says, "Yes, there's no problem with that."

10 Never any reference to anything other than a check from
11 Mr. Unck.

12 "With that promise on record, do you agree not to file
13 other forgery charges pre-dating this?"

14 "Mr. Saunders: Yes."

15 "The Court: Okay."

16 Mr. Saunders adds, "Out of Weber County."

17 The day that this defendant came back for sentencing I
18 had received a phone call from sergeant -- or now Lieutenant
19 Paige Ansley of the Riverdale Police Department. We
20 discovered new offenses, but not checks that this defendant
21 had done. In fact, specifically what he'd done is taken
22 someone else's identification, gone to the Driver's License
23 Division, got a new picture I.D. issued to him, promptly
24 gone out and committed a theft which is Count I of the file
25 that we have here, 971901220. And the accompanying forgery

1 was a credit application.

2 No reference at any time in that colloquy about theft
3 or credit applications. No knowledge that the State has
4 that he's gone out, used someone else's name, ran up a
5 couple of thousand dollars worth of account where he goes
6 in, opens a charge account, takes the property from R.C.
7 Willey.

8 Even taking it in the light most favorable to him,
9 under no circumstances did the State on this day -- assuming
10 you have jurisdiction to grant the motion -- agree to be
11 bound by an offense we didn't know about and an offense that
12 specifically is a theft.

13 Based upon all of that, this motion should be denied,
14 first, jurisdictionally, but beyond that, based upon the
15 facts. We cannot be bound by something we don't know about.
16 And we certainly can't be bound on a theft when all the
17 references take place on forgeries. And it's the Court that
18 uses the term forgery; Mr. Unck using the term checks.

19 THE COURT: And it was neither a check nor a
20 forgery?

21 MR. LAKER: Well, it was --

22 MR. HEWARD: It was a forgery of a credit
23 application. That's correct.

24 THE COURT: I see.

25 MR. LAKER: Your Honor, I -- I -- just to kind of

1 respond here, I have the complete transcript of the -- when
2 we start off on page 10 it says no. The question before
3 that was simply the Court asked him if he had any other
4 questions before you enter your pleas. That's was all that
5 was.

6 Second of all, I don't -- I don't have any contest
7 with -- with Mr. Heward with regard to the theft charge. I
8 don't -- I don't think we -- we can -- we can argue anything
9 about the theft charge, but I think we can based upon this
10 language.

11 (Off-the-record discussion)

12 MR. LAKER: But definitely a forgery, if the
13 forgery pre-dates the date of those checks, I think it's
14 covered within what was contemplated with the question from
15 the Court, "With that promise on the record then, do you
16 agree not to file other forgery charges pre-dating this?"
17 And the answer to that by Mr. Saunders was, "Yes."

18 (Unintelligible) okay.

19 And we agreed to pay restitution on everything. That's
20 not a -- not an issue, but I believe it says what it says.

21 MR. HEWARD: But it still doesn't change the fact
22 that the defendant himself was being sentenced on checks.
23 The defendant himself says: There are other checks out
24 there, not: Hey, I've used other names, I've gone in and
25 got credit, filled out credit applications, or anything like

1 that. That's the defendant's words. I've agreed to be
2 bound by the checks that are out there that you find that
3 I've written.

4 The defendant never uses the term -- or
5 (unintelligible) never uses the term theft, he never uses
6 the term credit application, and he surely doesn't talk
7 about other offenses under different names. And, frankly, I
8 think it was his hope that we wouldn't find those. He
9 didn't come in and say: Hey, I want you to agree to be
10 bound to not file anything that I've done. His term was
11 check.

12 We went through all this and that's the reason the
13 motion was withdrawn back in March is because of everything
14 that was just taking place on the record, even though there
15 still wasn't any jurisdiction back in March
16 (unintelligible). We'll submit it.

17 MR. UNCK: Your Honor, on the March 2nd hearing I
18 did not have these copies of these transcripts at that time.
19 I had no way to prove myself until I received them through
20 the mail through the court reporter -- about June when I
21 received them. That's when I filed the other motion to
22 dismiss to come back in.

23 THE COURT: But what's changed? It seems to me
24 that that just fortifies their position. If we're -- if
25 we're talking about forged checks and then they find a

1 different kind of forgery, I don't -- you know, I -- if
2 we're talking about checks, we're talking about checks. If
3 we're talking about --

4 MR. UNCK: Well --

5 THE COURT: -- other kinds of forgeries, we're
6 talking about other kinds of forgeries, seems to me.

7 MR. UNCK: At the time in Glasmann's court there
8 was multiple charges. There were checks, there were credit
9 accounts.

10 THE COURT: But -- but -- but your comment is, in
11 the transcript: Other checks, I don't know what's happened
12 to these other checks. We're talking about other checks.
13 We're not talking about other kinds of forgeries.

14 MR. LAKER: Well, that's -- that's what he talks
15 about, Your Honor. I -- I think you've got to look at this
16 as a --

17 THE COURT: Well, but -- but that's exactly the
18 point. If we're talking about the colloquy and he is saying
19 there are other checks out there that -- that I don't know
20 what's happened to them and so forth, it seems to me that --
21 that he's bound by that language. And I -- from a
22 jurisdictional standpoint, it occurs to me that Mr. Heward's
23 probably right anyway, but -- but based upon -- based upon
24 the colloquy and the fact that he was talking about other
25 checks, then it sounds to me -- it seems to me that the

1 State is bound by other checks would not necessarily be
2 bound by other types of forgeries. And if he went and got
3 false I.D and -- and stole money from R.C. Willey by -- by
4 reason of -- of these things, that's a whole different ball
5 game.

6 MR. LAKER: To the extent they're charged as things
7 other than forgery, I would agree with you. If they are
8 charged as forgeries, I think it's contemplated that
9 (unintelligible).

10 THE COURT: No, I -- forgery -- it's true that
11 forgery is forgery, but there are different types of
12 forgeries and he was talking about forged checks, and the
13 Court's going to hold him to that.

14 The motion's denied on two basis: Number one, the --
15 the jurisdictional issue, which I think you're correct
16 about; and, secondly, even if we got past that I think -- I
17 think -- I think you're correct.

18 MR. HEWARD: Thank you, Your Honor.

19 MR. LAKER: May I talk to my client for a moment,
20 Your Honor --

21 THE COURT: Sure. Go right ahead. That's --

22 MR. LAKER: -- so that I can appreciate what he's
23 trying to tell me here?

24 THE COURT: You bet. Go ahead.

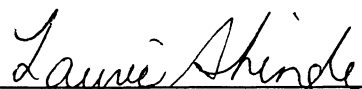
25 (WHEREUPON, at this time proceedings conclude.)

CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF WEBER)

I, Laurie Shingle, do hereby certify that the foregoing
10 pages of transcript constitute a true and accurate
record of the video-taped proceedings to the best of my
knowledge and ability as a Certified Shorthand Reporter
for the Second Judicial District Court of Weber County
in and for the State of Utah.

Dated at Ogden, Utah, this the 27th day of August,
1998.


Laurie Shingle, C.S.R.